
TITLE 329 SOLID WASTE MANAGEMENT BOARD

**FINDINGS AND DETERMINATION OF THE COMMISSIONER
PURSUANT TO [IC 13-14-9-7](#) AND SECOND NOTICE OF COMMENT PERIOD**
LSA Document #12-379

**DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING THE PRIORITY RANKING SYSTEM FOR
HAZARDOUS SUBSTANCES RESPONSE SITES AT [329 IAC 7.1](#) AND RULES CONCERNING ELECTRONIC
WASTE AT [329 IAC 16](#)**

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to the priority ranking system for hazardous substance response sites at [329 IAC 7.1](#) and electronic waste at [329 IAC 16](#). The purpose of this notice is to seek public comment on the draft rule, including suggestions for specific language to be included in the rule. IDEM seeks comment on the affected citations listed and any other provisions of Title 329 that may be affected by this rulemaking.

CITATIONS AFFECTED: [329 IAC 7.1-2-5](#); [329 IAC 7.1-2-9](#); [329 IAC 7.1-2-13](#); [329 IAC 7.1-4-1](#); [329 IAC 16-10-1](#).

AUTHORITY: [IC 4-22-2](#); [IC 13-12-3-2](#); [IC 13-14-8-2](#); [IC 13-19-3](#); [IC 13-23-13-7](#); [IC 13-24-1](#); [IC 13-25-4-1](#); [IC 13-25-4-5](#); [IC 13-25-4-7](#).

STATUTORY REQUIREMENTS

[IC 13-14-9-7](#) recognizes that under certain circumstances it may be appropriate to reduce the number of public comment periods routinely provided. In cases where the commissioner determines that the rulemaking policy alternatives available to IDEM are so limited that the notice of first public comment period would provide no substantial benefit to the environment or persons to be regulated or otherwise affected by the proposed rule, IDEM may forgo this comment period and proceed directly to the notice of second public comment period.

If the commissioner makes the determination of limited rulemaking policy alternatives required by [IC 13-14-9-7](#), the commissioner shall prepare written findings and include them in the second notice of public comment period published in the Indiana Register. This document constitutes the commissioner's written findings pursuant to [IC 13-14-9-7](#).

The statute provides for this shortened rulemaking process if the commissioner determines that "the rulemaking policy alternatives available to the department are so limited that the public notice and comment period under [IC 13-14-9-3](#)... would provide no substantial benefit to:

- (1) the environment; or
- (2) persons to be regulated or otherwise affected by the proposed rule".

BACKGROUND

This rulemaking will make [329 IAC 7.1](#) and [329 IAC 16](#) consistent with the statute at [IC 13-12-3-2](#) concerning risk-based cleanup.

[IC 13-14-9-4](#) Identification of Restrictions and Requirements Not Imposed under Federal Law

This rule will make [329 IAC 7.1](#) and [329 IAC 16](#) consistent with the statute that requires risk-based remediation standards under [IC 13-12-3-2](#).

Potential Fiscal Impact

It is not anticipated for the fiscal impact of this rulemaking to exceed \$500,000. There should not be any costs that can be associated with this rulemaking.

Public Participation and Workgroup Information

No workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Lynn C. West, Rules Development Branch, Office of Legal Counsel at (317) 232-3593 or (800) 451-6027 (in Indiana).

Small Business Assistance Information

IDEM established a compliance and technical assistance (CTAP) program under [IC 13-28-3](#). The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at:

www.in.gov/idem/ctap

For purposes of [IC 4-22-2-28.1](#), the Small Business Regulatory Coordinator for this rule is:

Jessica Faust-Hamblin

IDEM Small Business Regulatory Coordinator

MC 60-04 IGCS W041
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 232-8172 or (800) 988-7901
ctap@idem.in.gov

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 5-28-17-5](#) is:

Eric P. Shields
Indiana Economic Development Corporation
One North Capitol, Suite 700
Indianapolis, IN 46204
(317) 234-3997
smallbizombudsman@iedc.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 5-28-17-5](#), specifically [IC 5-28-17-5\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

The Small Business Assistance Program Ombudsman is:

Brad Baughn
IDEM Small Business Assistance Program Ombudsman
MC 50-01 IGCN 1301
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 234-3386 or (800) 451-6027
bbaughn@idem.in.gov

FINDINGS

The commissioner of IDEM has prepared written findings regarding rulemaking on amendments to rules at [329 IAC 7.1](#) concerning the priority ranking system for hazardous substance response sites. These findings are prepared under [IC 13-14-9-7](#) and are as follows:

- (1) This rulemaking will make [329 IAC 7.1](#) and [329 IAC 16](#) consistent with the statute at [IC 13-12-3-2](#) concerning risk-based remediation standards.
- (2) I have determined that under the specific circumstances pertaining to this rule, the rulemaking policy alternatives are so limited that the public notice and comment period provided in the notice of first public comment period would provide no substantial benefit to the environment or to persons to be regulated or otherwise affected by the rule.
- (3) The draft rule is hereby incorporated into these findings.

Thomas W. Easterly
Commissioner
Indiana Department of Environmental Management

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Comments may be submitted in one of the following ways:

- (1) By mail or common carrier to the following address:
LSA Document #12-379 ([329 IAC 7.1](#) and [329 IAC 16](#) Change Rule)
Janet Pittman
Rules Development Branch
Office of Legal Counsel
Indiana Department of Environmental Management
100 North Senate Avenue
MC 65-45
Indianapolis, IN 46204-2251
- (2) By facsimile to (317) 233-5517. Please confirm the timely receipt of your faxed comments by calling the Rules Development Branch at (317) 232-8922.
- (3) By electronic mail to lwest@idem.in.gov. To confirm timely delivery of your comments, please request a document receipt when you send the electronic mail. **PLEASE NOTE: Electronic mail comments will NOT be considered part of the official written comment period unless they are sent to the address indicated in this notice.**
- (4) Hand delivered to the receptionist on duty at the thirteenth floor reception desk, Office of Legal Counsel,

Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Regardless of the delivery method used, to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking you are commenting on.

COMMENT PERIOD DEADLINE

All comments must be postmarked, faxed, or time stamped no later than August 10, 2012. Hand-delivered comments must be delivered to the appropriate office by 4:45 p.m. on the above-listed deadline date.

Additional information regarding this action may be obtained from Lynn C. West, Rules Development Branch, Office of Legal Counsel, (317) 232-3593 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. [329 IAC 7.1-2-5](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 7.1-2-5](#) "Geologically sensitive area" defined

Authority: [IC 4-22-2](#); [IC 13-14-8-2](#); [IC 13-19-3](#); [IC 13-23-13-7](#); [IC 13-24-1](#); [IC 13-25-4](#)

Affected: [IC 13-12-3-2](#); [IC 13-25-4-7](#)

Sec. 5. "Geologically sensitive area" is characterized by conditions that allow contaminants to migrate away from the source area in such a manner that invalidates the assumptions of the soil-to-ground water partitioning model used to calculate the default closure levels under the RISC. **risk based remediation standards under [IC 13-12-3-2](#)**. The term includes a karst area or a wellhead protection area.

(Solid Waste Management Board; [329 IAC 7.1-2-5](#); filed Jun 5, 2008, 11:19 a.m.: [20080702-IR-329060147FRA](#))

SECTION 2. [329 IAC 7.1-2-9](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 7.1-2-9](#) "No further action letter" defined

Authority: [IC 4-22-2](#); [IC 13-14-8-2](#); [IC 13-19-3](#); [IC 13-23-13-7](#); [IC 13-24-1](#); [IC 13-25-4](#)

Affected: [IC 13-12-3-2](#); [IC 13-25-4-7](#)

Sec. 9. "No further action letter" means a letter stating one (1) of the following:

(1) IDEM determines the site:

(A) meets ~~RISC closure levels for soil or ground water, or both, appropriate for land use~~ **the risk based remediation standards under [IC 13-12-3-2](#)** based on all the information available to the department; or

(B) does not meet ~~RISC closure levels appropriate for the land use~~ **the risk based remediation standards under [IC 13-12-3-2](#)** and an environmental restrictive covenant is placed on the site and recorded with the appropriate county office of the recorder;

and no further action is warranted or necessary.

(2) Remediation has been completed so that no further action is warranted or currently necessary at the site.

(Solid Waste Management Board; [329 IAC 7.1-2-9](#); filed Jun 5, 2008, 11:19 a.m.: [20080702-IR-329060147FRA](#))

SECTION 3. [329 IAC 7.1-4-1](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 7.1-4-1](#) Ranking

Authority: [IC 4-22-2](#); [IC 13-12-3-2](#); [IC 13-14-8-2](#); [IC 13-19-3](#); [IC 13-23-13-7](#); [IC 13-24-1](#); [IC 13-25-4](#)

Affected: [IC 13-12-3-2](#); [IC 13-25-4-7](#)

Sec. 1. (a) The department shall utilize an objective method to assess, on the basis of available information, the relative potential threat to human health or the environment from hazardous substances response sites or releases. The method used to assess hazardous substances response sites or releases will be called the priority ranking system (PRS).

(b) After the department receives the notification of release, the site or release will be prioritized under the PRS and placed in the appropriate priority as follows:

(1) If the department determines, based on the notification of a release submitted to the department, that one

(1) of the following has occurred, then the site or release is considered a high priority:

(A) Vapors from a listed or characteristic hazardous waste, a hazardous substance, petroleum, petroleum constituent, or contaminant are detected in a habitable structure or other structure such as a utility conduit, storm sewer, or sanitary sewer at a level that exceeds:

(i) the chronic, long term risk-based exposure for a contaminant of concern; or

(ii) ten percent (10%) of the contaminant of concern's lower explosive limit (LEL).

(B) A listed or characteristic hazardous waste, a hazardous substance, petroleum, petroleum constituent, or contaminant is detected in surface water or a drinking water well at or above MCLs or ~~RISC residential default~~ cleanup levels for ground water **that are above the risk based remediation standards under [IC 13-12-3-2](#)**.

(C) Free product is present.

(D) An ecologically sensitive area or a geologically sensitive area is detrimentally affected by the release.

(E) Ground water contaminated by the release is located within three thousand (3,000) feet of a fixed radius of a wellhead or a one (1) year time of travel of a delineated, approved wellhead protection area for a community water system.

(F) Hazardous substances are identified in surface soil, which has a direct soil contact exposure pathway, at levels exceeding ~~RISC residential default cleanup levels~~. **the risk based remediation standards under [IC 13-12-3-2](#)**.

(2) If the department determines, based on the notification of a release submitted to the department, that one

(1) of the following has occurred, then the site or release is considered a medium priority:

(A) None of the conditions set forth in subdivision (1) are applicable.

(B) Ground water contaminated by the release is located within a five (5) or ten (10) year time of travel of a delineated, approved wellhead protection area for a community water system or within three thousand (3,000) feet of a fixed radius of a wellhead.

(C) A listed or characteristic hazardous waste, a hazardous substance, petroleum, petroleum constituent, or contaminant is detected in ground water at any concentration.

(3) If the department determines, based on the notification of a release submitted to the department, that one

(1) of the following has occurred, then the site or release is considered a low priority:

(A) None of the conditions set forth in subdivisions (1) and (2) are applicable.

(B) No hazardous substance, petroleum, petroleum constituent, or contaminants are detected in ground water.

(C) A listed or characteristic hazardous waste, a hazardous substance, petroleum, petroleum constituent, or contaminant is detected in soil, which does not have a direct soil contact exposure pathway, at concentrations exceeding ~~RISC residential default cleanup levels~~. **the risk based remediation standards under [IC 13-12-3-2](#)**.

(c) For purposes of this section, "surface soil" and "direct soil contact exposure pathway" are defined or further explained in ~~RISC~~. **the risk based remediation standards under [IC 13-12-3-2](#)**.

(Solid Waste Management Board; [329 IAC 7.1-4-1](#); filed Jun 5, 2008, 11:19 a.m.: [20080702-IR-329060147FRA](#))

SECTION 4. [329 IAC 16-10-1](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 16-10-1](#) Closure

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-12-3-2](#); [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 1. (a) The owner, operator, or registrant must notify the commissioner at least fourteen (14) days before the date when the registered facility permanently ceases accepting e-waste.

(b) All e-waste and electronic debris must be:

(1) removed from the:

(A) building;

(B) land;

(C) containers; and
(D) vehicles; and
(2) disposed of according to [329 IAC 16-9-1](#);
within sixty (60) days of the registered facility no longer accepting e-waste.

(c) Any contaminants resulting from the e-waste storage or processing that ~~are above RISC industrial levels~~ **exceed the risk based remediation standards under [IC 13-12-3-2](#)** must be contained, removed, and disposed of according to [329 IAC 16-9-1](#). This requirement does not include any contaminants existing before the storage or processing of e-waste.

(d) A registered facility must be certified closed under subsection (e) after all waste is removed and disposed of in accordance with [329 IAC 3.1](#), [329 IAC 10](#), or [329 IAC 13](#), as applicable.

(e) The owner, operator, or registrant must send a certification statement indicating that the requirements of this section have been met to the commissioner within thirty (30) days after completion of the closure. The closure certification will be deemed adequate unless within ninety (90) days of receipt of the closure certification, the commissioner issues a notice of deficiency of closure, including actions necessary to correct the deficiency.

(f) After the closure certification is deemed adequate by the commissioner, the owner, operator, or registrant of the registered facility is released from the obligation of maintaining closure financial responsibility.

*(Solid Waste Management Board; [329 IAC 16-10-1](#); filed Aug 15, 2007, 10:22 a.m.:
[20070912-IR-329050181FRA](#))*

SECTION 5. [329 IAC 7.1-2-13](#) IS REPEALED.

[Notice of Public Hearing](#)

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